

11-1160 FEDERAL TRADE COMMISSION V. PHOEBE PUTNEY HEALTH SYSTEM, INC.

DECISION BELOW: 663 F.3d 1369

LOWER COURT CASE NUMBER: 11-12906

QUESTION PRESENTED:

Under the "state action doctrine," the federal antitrust laws do not apply to the anticompetitive conduct of certain subordinate public entities created by a State if the conduct is authorized as part of a "state policy to displace competition" that is "clearly articulated and affirmatively expressed" in state law. *Town of Hallie v. City of Eau Claire*, 471 U.S. 34,38-39 (1985) (citations omitted). The doctrine extends to private entities if the state policy is so articulated and the private conduct is "'actively supervised' by the State itself," *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 105 (1980) (citation omitted). "[T]he State may not," however, "validate * * * anticompetitive conduct simply by declaring it to be lawful." *Hallie*, 471 U.S. at 39. In this case, a local government entity created by Georgia law, acting at the behest of a private actor and using the general corporate powers conferred on it by the State, acquired the only competitor of that private actor and immediately transferred control of the competitor to the private actor, creating a private monopoly. The questions presented are as follows:

1. Whether the Georgia legislature, by vesting the local government entity with general corporate powers to acquire and lease out hospitals and other property, has "clearly articulated and affirmatively expressed" a "state policy to displace competition" in the market for hospital services.

2. Whether such a state policy, even if clearly articulated, would be sufficient to validate the anticompetitive conduct in this case, given that the local government entity neither actively participated in negotiating the terms of the hospital sale nor has any practical means of overseeing the hospital's operation.

CERT. GRANTED 6/25/2012